THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources **BOARD AGENDA #** *B-4

Urgent ☐ **Routine** ☒ **AGENDA DATE** February 9, 2016

CEO Concurs with Recommendation YES ☒ **NO** ☐ **4/5 Vote Required YES** ☐ **NO** ☒
(Information Attached)

SUBJECT:

Approval to Enter into an Agreement with Sidley Austin LLP, for Professional Legal Services Related to the Stanislaus Waste-to-Energy Facility

STAFF RECOMMENDATIONS:

1. Approve the five-year agreement with Sidley Austin LLP, for professional legal services related to the Stanislaus Waste-to-Energy Facility, not to exceed $450,000.

2. Authorize the Director of Environmental Resources to sign the agreement with Sidley Austin LLP.

FISCAL IMPACT:

The contract with Sidley Austin LLP will not exceed $450,000 over the five-year period beginning with Fiscal Year 2015-2016 and ending in Fiscal Year of 2019-2020. Services under the proposed agreement will be paid from the Waste-to-Energy Fund. A total of $50,000 was appropriated by the Solid Waste-to-Energy Executive Committee for legal services for Fiscal Year 2015-2016. Additional funding for the term of this agreement will not exceed $100,000 per year and will be appropriated through the annual budget process of the Solid Waste-to-Energy Executive Committee.

BOARD ACTION AS FOLLOWS: **No.** 2016-77

On motion of Supervisor Withrow, **Seconded by Supervisor** O'Brien
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None
1) X **Approved as recommended**
2) ____ **Denied**
3) ____ **Approved as amended**
4) ____ **Other:**
MOTION:

ATTEST: Christine Ferraro Tallman
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Enter into an Agreement with Sidley Austin LLP, for Professional Legal Services Related to the Stanislaus Waste-to-Energy Facility

DISCUSSION:

The County of Stanislaus and the City of Modesto (collectively the Contracting Communities) share responsibility and contractual obligations pursuant to a Joint Powers Agreement regarding the operation of the Waste-to-Energy Facility (Facility). The Facility is a public-private partnership with Covanta Stanislaus, Inc. (Covanta), who operates the Facility pursuant to a 15-year Service Agreement (Agreement). The Agreement is set to conclude on June 30, 2027.

The Contracting Communities entered into a legal services Agreement with Sidley Austin LLP to provide legal counsel for the negotiation of the new Agreement with Covanta. The Contracting Communities negotiated a reduction in the future liability risk exposure from 100% liability for unforeseen circumstances cost down to 25% liability as part of the new Agreement. This clause was added to the Agreement to prevent large fluctuations in the tipping fees due to unforeseen circumstances such as a change in law that could significantly raise operational costs.

Currently there are two pieces of legislation that fall into the category of unforeseen circumstances under the Change in Law clause, Senate Bill 350 (SB 350) Clean Energy and Pollution Reduction Act of 2015 (Clean Energy Act), and Assembly Bill 1063 (AB 1063) Solid Waste Charges. Each will raise operational costs for the Waste-to-Energy (WTE) Facility that may require amending or renegotiating the current Agreement requiring a new legal service agreement.

SB 350 Clean Energy Act was recently signed by the Governor. AB 1063 Solid Waste Charges is still working its way through the legislature. Both are concerns to the WTE Service Agreement with Covanta. The Clean Energy Act poses the greatest challenge to the Service Agreement. This law extended for one year the expiration of the WTE Facility designation as a renewable energy source. This designation will expire in January of 2017, unless the Contracting Communities and Covanta are successful in passing new legislation extending the renewable energy designation for the WTE Facility. The significance of retaining the designation is electrical power generating companies can sell their electrical power at a premium price over conventional power producers. The reason for the difference comes from the Public Utilities Act (PUA). The PUA mandates utility companies to purchase 33% of their total electricity sales from eligible renewable energy sources by December of 2020, creating the premium over conventional power. Renewable Energy sources include solar, wind and until January of 2017, Stanislaus County's WTE Facility. The resulting reduction in revenue from the sale of electricity for Covanta will force an increase in the processing charge at the Facility to offset the revenue loss.

This law will trigger the Change in Law clause in the Service Agreement requiring a percentage of the cost to be passed on to the Contracting Communities. The Service Agreement limits the Contracting Communities risk exposure to 25% of the overall expenses with a cost limit of $3.75 million. The $3.75 million was set aside by the Contracting Communities for Changes in Law and Unforeseen Circumstances. This change in law will require the renegotiation of the Service Agreement.

AB 1063 Solid Waste Charges, if passed, will raise the current fee imposed on disposal facilities from $1.40 per ton to $4.00 a ton beginning in 2017. This potential change in law will increase the current tipping fee for WTE ash disposal paid by Covanta from $26.53 to over $30 per ton. This additional expense would also trigger the Change in Law clause in the Service Agreement.

As a result of the law change and forthcoming legislation requiring the renegotiation of the Service Agreement, there is a need for legal services to consider possible transitions to a new Service Agreement. The Contracting Communities may elect to amend the existing Agreement or negotiate a new Agreement. In either case, legal services will be needed to evaluate the current terms and options of the Agreement and draft any negotiated terms to replace the existing Agreement. Legal representation is also desired for negotiation assistance.

The City of Modesto and Stanislaus County staff associated with the Waste-to-Energy project presented these issues at the Solid Waste-to-Energy Executive Committee meeting on October 15, 2015. Staff recommended obtaining the legal services from Sidley Austin LLP due to their past involvement in the negotiation of the current Service Agreement. The Solid Waste-to-Energy Executive Committee voted to authorize staff to proceed in the negotiation of a new contract with Sidley Austin LLP and submit the new contract for consideration by the Modesto City Council and the Stanislaus County Board of Supervisors. The term of this contract will remain in effect through June 2020.

City of Modesto staff will submit a similar recommendation for consideration by the Modesto City Council in a future Council meeting. The executed agreement would be between County of Stanislaus, City of Modesto and Sidley Austin LLP.

POLICY ISSUE:

Approval of this action is consistent with the Board's priorities of Effective Partnerships, and Efficient Delivery of Public Services. It is also consistent with the Department's mission to promote a safe and healthy environment and improve the quality of life in the community through a balance of science, education, partnerships, and environmental regulation.

STAFFING IMPACT:

The administration of the legal services contract will be accomplished using existing department staff.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources. Telephone: 209-525-6700

ATTACHMENTS:

Attachment 1 - Legal Services Agreement with Sidley Austin LLP, Pages 1-12

Attachment 1

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services is made and entered into by and between the County of Stanislaus and the City of Modesto, collectively referred to as the "Contracting Communities", ("Client") and Sidley Austin LLP("Attorney") on _____ (the "Agreement").

Recitals

Whereas, the Client has a need for legal services with respect to the Service Agreement between the Client and Covanta Stanislaus, Inc.; and

Whereas, the Attorney is specially trained, experienced and competent to perform and has agreed to provide such services;

Whereas, Business and Professions Code section 6148(a) provides, among other things, that where it is foreseeable that the total expense to a client will exceed $1,000, an agreement for legal services must be in writing and contain (1) the applicable hourly rate and other standard rates, fees and charges, (2) the general nature of the legal services to be provided, (3) the respective responsibilities of the Attorney and the client, and (4) a statement disclosing whether the Attorney maintains errors and omissions insurance applicable to the services to be rendered; and

Whereas, the total expenses to the Client may exceed $1,000;

Now, therefore, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. Scope of Work

1.1 The Attorney shall provide legal services, advice and representation from time-to-time as requested by the Client as more particularly set forth in **Exhibit A** attached to this Agreement and, by this reference, made a part hereof. The Attorney also shall identify issues and other matters that the Attorney reasonably believes to be of interest to the Client or that might affect the Client's interest and shall notify the Client of such issues or matters.

1.2 Services and work provided by the Attorney at the Client's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and local laws, ordinances, regulations and resolutions. The Attorney may provide the Client with an opinion about the possible result or outcome of a legal matter, but the Attorney makes no promises, guarantees or representations regarding the outcome of any matter as to which the Attorney will provide legal services, advice or counsel to the Client.

1.3 The Attorney shall provide sufficient staff to carry out the legal services provided under this Agreement. If the Attorney deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Attorney will so advise the Client and seek the Client's prior approval of such employment. Any consultant, expert or investigator employed by the Attorney will be the agent of the Attorney, not the Client.

1.4 Attorney is obligated to perform in a timely manner those services and work under this Agreement. It is understood by Attorney that the performance of these services and work will require a varied schedule with the hours and times for completion of said services to be set by Attorney; provided, however, that such schedule is subject to review by and concurrence of the Client.

2. Consideration

2.1 The Attorney shall be compensated a time and materials basis, based on the hours worked by the Attorney, multiplied by the current hourly Schedule of Rates charged by the Attorney; a copy of which is attached (Exhibit B) to this Agreement and incorporated herein by reference. The parties acknowledge that rates may change in the future, and agree that the most current Schedule of Rates shall apply when made a part of the Agreement. Attorney will provide the Client 30-days notice before any proposed change in the rate schedule and the new schedule of rates shall take effect when approved by the County. In addition to the aforementioned fees, Attorney will be reimbursed for the following expenses that are reasonable, necessary and actually incurred by the Attorney in connection with the services:

(a) Fees or charges of any kind paid or advanced by the Attorney, including, but not limited to costs of service and filing of pleadings, filing fees, other charges assessed by courts and other public agencies, court reporter fees, jury fees, witness fees, messenger and delivery fees.

(b) The cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement.

(c) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.

(d) Communications charges, including, but not limited to, long distance telephone charges (including facsimile and e-mail charges) and postage.

(e) Travel expenses, including transportation, lodging and meals, parking, and mileage; per Stanislaus County Travel Policy.

(f) Any other reasonable out of pocket expenses incurred by the Attorney.

2.2 The parties hereto acknowledge the maximum amount to be paid by the Client for services provided shall not exceed $100,000.00 during any single calendar year, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding $100,000.00 are approved by the Client.

2.3 The Attorney shall provide the Client with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the Client shall pay in full within 30 days of the date each invoice is approved by the Client. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 Except as otherwise expressly provided in this Agreement or any amendment to this Agreement, Attorney shall not be entitled to nor receive from the Client any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Attorney shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.5 The Client will not withhold any Federal or State income taxes or Social Security tax from any payments made by the Client to Attorney under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Attorney. The Client has no responsibility or liability for payment of Attorney's taxes or assessments.

3. Term

3.1 The term of this Agreement shall commence on the date of this Agreement and shall continue for a period of five years unless terminated as provided in this Agreement.

3.2 Either party may terminate this agreement without cause upon prior written notice to the other party. Termination of this Agreement shall not affect the Client's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Attorney as provided in Paragraph 2 herein, subject to any applicable setoffs. Both parties shall sign any documents necessary to complete Attorney's discharge or withdrawal.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) death or incapacity of the Attorney, or (c) sale of Attorney's business or practice.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Attorney to provide the services and work provided under this Agreement must be procured by Attorney and be valid at the time Attorney enters into this Agreement. Further, during the term of this Agreement, Attorney must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Attorney at no expense to the Client.

5. Office Space, Supplies, Equipment, Etc.

Attorney shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Attorney to provide the services under this Agreement. The Client is not obligated to reimburse or pay Attorney for any expense or cost incurred by Attorney in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Attorney in providing and maintaining such items is the sole responsibility and obligation of Attorney.

6. Insurance

6.1 Attorney shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars ($1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Attorney under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Attorney or the Attorney's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars ($1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Attorney certifies under section 1861 of the Labor Code that the Attorney is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Attorney will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by Client. At the option of the Client, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Attorney shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the Client guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The Client, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Attorney agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Attorney's defense and indemnification obligations as set forth in this Agreement.

6.3 The Attorney shall include Client, its Officers, Directors, Officials, Agents, Employees and volunteers as Additional Insureds under the General Liability and Auto policy and shall supply specific endorsements for same. The Additional Insured endorsement under the General Liability policy will be the Additional Insured – Owners, Lessees or Attorneys – Scheduled Person or Organization ISO Form CG2010 with the current applicable revision date. The Additional Insured endorsement under the Auto Libility will be "where required by written contract". All Insurance policies will include a Waiver of Subrogation in favor of County.

6.4 The Attorney's insurance coverage shall be primary insurance regarding Client and Client's officers, officials and employees. Any insurance or self-insurance maintained by Client or Client's officers, officials and employees shall be excess of Attorney's insurance and shall not contribute with Attorney's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Client, its officers, directors, officials, agents, employees and volunteers. Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Any available insurance proceeds in excess of the specified minimum limits required by this Agreement shall be available to Client for defense and damages. The indemnity and insurance sections are stand alone and not dependent on each other for coverage limits

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Client or its officers, officials, employees or volunteers.

6.6 The Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to Client. The Attorney shall promptly notify, or cause the insurance carrier to promptly notify, the Client of any change in the insurance policy or policies required under this

Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the Client; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-:VII shall be acceptable to the Client; lesser ratings must be approved in writing by the Client.

6.9 Attorney shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Attorney begins performance of its obligations under this Agreement, Attorney shall furnish Client with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Attorney. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in Client's sole and absolute discretion, approved by Client. Client reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Attorney and Attorney's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend the Client from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Attorney or Attorney's employees, agents, representatives or subcontractors determined by the court of law to be payable by attorney. Notwithstanding the foregoing, Attorney's obligation to indemnify the Client and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Attorney in contributing to such claim, damage, loss and expense.

7.2 Attorney's obligation to defend, indemnify and hold the Client and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Attorney to procure and maintain a policy of insurance.

7.3 To the extent permitted by law, the Client shall defend, indemnify and hold harmless Attorney and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the active negligence or wrongful acts of Client.

8. Status of Attorney

8.1 All acts of Attorney and its employees, agents, representatives, subcontractors and all others acting on behalf of Attorney relating to the performance of this Agreement, shall be

performed as independent contractors and not as agents, officers or employees of the Client. Attorney, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of the Client. Except as expressly provided in this Agreement or other written authorization, Attorney has no authority or responsibility to exercise any rights or power vested in the Client. No agent, officer or employee of the Client is to be considered an employee of Attorney. It is understood by both Attorney and Client that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Attorney and its employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of the Client.

8.3 As an independent contractor, Attorney hereby indemnifies and holds the Client harmless from any and all claims that may be made against the Client based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Attorney shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of the Client shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Attorney. Further, the Client has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Nondiscrimination

10.1. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

10.2 Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

10.3 Consultant shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Consultant's delivery of services.

11. Confidentiality

The Attorney agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

12. Assignment

This is an agreement for the services of Attorney. The Client has relied upon the skills, knowledge, experience and training of Attorney and the Attorney's firm, associates and employees as an inducement to enter into this Agreement. Attorney shall not assign or subcontract this Agreement without the express written consent of the Client. Further, Attorney shall not assign any monies due or to become due under this Agreement without the prior written consent of the County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Conflicts

The Attorney represents and warrants that it has no interest and agrees that it shall not acquire any interest, direct or indirect, which would conflict in any manner of degree with the performance of the work and services under this Agreement, unless specifically waived in writing by the County.

15. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Attorney or the Client shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To Client: County of Stanislaus
Department of Environmental Resources
Attention: Jami Aggers
3800 Cornucopia Way, Suite C
Modesto, CA 95358

City of Modesto
Public Works Department
Attention: Jocelyn Reed
1010 Tenth Street, Suite 4100
Modesto, CA 95354

To Attorney: Eric D. Tashman, Esq.
Sidley Austin LLP
555 California Street, 50th
Floor San Francisco, CA 94104

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate on the day and year first hereinabove written.

COUNTY OF STANISLAUS

BY: _____
Jami Aggers
Director – Environmental Resources

Date: _____

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____
Amanda M. Dehart
Deputy County Counsel

CITY OF MODESTO

By: _____
Jim Holgersson
City Manager

Attest:

By: _____
Stephanie Lopez
City Clerk

APPROVED AS TO FORM:

By: _____
Adam Lindren
City Attorney

SIDLEY AUSTIN, LLP

By: _____
Eric D. Tashman, Esq.

Date: 4/13/16

EXHIBIT A

The following Scope of Services is in addition to "Scope of Work" referenced in Section 1 of the Agreement:

Scope of Services

A. The Attorney shall provide the following legal services upon request by the Client, with respect to the Amended and Restated Service Agreement (the "Service Agreement") between the Contracting Communities (Client) and Covanta Stanislaus, Inc., for the supply and acceptance of Solid Waste to the Stanislaus Resource Recovery Facility.

1. Consultation with the Client, the City of Modesto (the "City"), the County of Stanislaus (the "County"), City Attorney and County Counsel, the Client's financial advisors and auditors, engineers, or any other persons designated by the Client;
2. Evaluation of terms and options of existing the Service Agreement, and provide clear interpretation to the Client;
3. Assistance to the Client in negotiating agreement(s) to replace, or amend, the existing Service Agreement with Covanta Stanislaus, Inc.
4. Drafting of amendments to the existing Service Agreement, or drafting of new service agreement(s); together with preparation of any related documents;
5. Preparation of a work plan and timetable setting forth the actions necessary to accomplish amending or replacing the Service Agreement;
6. Coordinate tasks with the City Attorney and County Counsel, as needed;
7. Attendance at and participation in meetings with staff of the County, City, and Covanta Stanislaus, Inc., and Solid Waste Executive Committee meetings, and public hearings, when necessary;
8. Preparation of final transcripts;
9. Provide such other legal services, as may be incidental to the foregoing.

B. Attorney, upon request by the Client, will evaluate and advice the Client on terms and options available in the existing, and future Power Purchase Agreements between Covanta Stanislaus, Inc. and PG&E, or other utility company.

C. Attorney, upon request by the Client, will provide the Client with advice on federal, state and local environmental legislation affecting the operations of the Resource Recovery Facility.

D. Attorney, upon request by the Client, will provide the Client with advice on federal, state and local legislation affecting the Service Agreement.

E. Attorney will provide other legal services, special advice or opinions requested by the Client on the Service Agreement and any related documents, and the Power Purchase Agreement.

F. Eric D. Tashman will be the partner-in-charge and will be charged with supervision and/or performance of duties under this Agreement. He will consult with and be assisted by such other partners, associates, and/or employees as he deems necessary, but he shall remain committed to this Agreement unless the Client consents to a substitution, which consent shall be at the Client's sole discretion.

Other Services

Attorney, upon request by the Client, will provide representation of the Client in any legal action challenging the validity of the Service Agreement and any related documents.

Reports and Information

Attorney shall furnish to the Client, at such times and in such forms as the Client may require, such statements, records, reports, data and information as the Client may request pertaining to matters covered by this Agreement.

Waiver of Conflict; General Conflict Provisions

The Client has been advised that the Attorney represents numerous other clients including, among others, other public entities in the State of California, and various financial institutions and underwriters. Many of these clients rely on the Attorney for general representation. It may develop in the future that an adverse relationship may develop between the Client and one of the Attorney's other clients. If the Attorney is not representing the Client in that matter and the matter in which the Client and the other client have adverse interests is not substantially related to the Attorney's representation of the Client under this Agreement, the Client agrees that the Attorney may represent the other client. With respect to any other conflict or potential conflict situation that the Attorney may bring to the attention of the Client under this paragraph, the Client agrees that it will give practical and reasonable consideration to any request from the Attorney for consent to the Attorney's handling of the other matter giving rise to the conflict or potential conflict, but nothing herein shall require the Client to provide consent to a conflict that, under the California Rules of Professional Conduct, is one to which a Client may choose not to consent.

EXHIBIT B

RATE SCHEDULE

The Attorney will bill the Client on the basis of its hourly billable blended rate. The hourly billable rate is as follows:

Attorney	$680.00
Paralegals	$295.00

The Attorney will provide to the Client a computer printout, which will detail the exact hours spent by the partner attorney.

The above rates will be subject to an upward adjustment of 5%, effective as of July 1, 2016, and on each July 1, thereafter.